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July 10, 2007

VIA E-FILING & HAND DELIVERY

Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Midwestern Telecommunications, Incorporated Application for Designation as an
Eligible Telecommunications Carrier for the Purposes of Receiving Federal
Universal Service Support Pursuant to Sections 214 (e)(2) of the
Telecommunications Act of 1996
Docket No. 2007-32-C

Dear Mr. Terreni:

Enclosed please find the original and one copy of the Direct Testimony of James M. McDaniel in the above referenced docket.

Please note that the attached documents are exact duplicates, with the exception of the form of the signature, of the e-filed copy submitted to the Commission in accordance with its electronic filing instructions.

By copy of this letter we are also serving all other parties of record. Please let me know if you have any questions.

Sincerely,


C. Lessie Hammonds

CLH/pjm
Enclosures

cc: John J. Pringle, Jr., Esquire
Margaret M. Fox, Esquire

THE OFFICE OF REGULATORY STAFF

DIRECT TESTIMONY

OF

JAMES M. MCDANIEL



DOCKET NO. 2007-32-C

**Midwestern Telecommunications, Incorporated Application for
Designation as an Eligible Telecommunications Carrier for the
Purposes of Receiving Federal Universal Service Support Pursuant to
Sections 214 (e)(2) of the Telecommunications Act of 1996**

July 10, 2007

TESTIMONY OF JAMES M. MCDANIEL

BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2007-32 –C

IN RE: MIDWESTERN TELECOMMUNICATIONS, INCORPORATED

Q. MR. MCDANIEL, WOULD YOU PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION?

A. My name is James M. McDaniel. My work address is 1441 Main Street, Columbia, South Carolina. I am employed by the Office of Regulatory Staff. I hold the position of Program Manager – Telecommunications.

Q. WOULD YOU PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND YOUR BUSINESS EXPERIENCE?

A. I received a B.S. Degree in Engineering from the University of South Carolina in December of 1975. I was employed for over 28 years by the South Carolina Public Service Commission's (SCPSC) Utilities Department. In September, 2004, I began my employment with the South Carolina Office of Regulatory Staff in its Telecommunications area. Most of my career has involved the regulation of the telecommunications industry in South Carolina.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

2 A. Yes. I have offered testimony in proceedings concerning ratemaking, rate design,
3 depreciation, rule making, and complaints.
4

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. The purpose of my testimony is to comment on the Petition of Midwestern
7 Telecommunications, Inc. (Midwestern, Applicant, or Company) for designation as an
8 eligible telecommunications carrier (ETC) within South Carolina.
9

10 **Q. IN WHAT AREAS OF THE STATE DOES MIDWESTERN SEEK ETC**
11 **DESIGNATION?**

12 A. According to the Application, Midwestern seeks eligible telecommunications carrier
13 status in areas specifically served by BellSouth Telecommunications, Inc. now doing
14 business as AT&T South Carolina in the state of South Carolina.
15

16 **Q. PLEASE SUMMARIZE YOUR REVIEW OF MIDWESTERN'S APPLICATION.**

17 A. Midwestern filed its Application pursuant to 47 U.S.C. 214(e)(2) of the Federal
18 Telecommunications Act of 1996 and pursuant to 47 C.F.R. Section 54.201 of the
19 Federal Communications Commission's rules. In addition, Midwestern has an
20 interconnection agreement with AT&T South Carolina. This agreement contains
21 provisions which allow the Company to provide telephone services through the use of
22 unbundled network elements. Since the company uses AT&T South Carolina's network
23 elements to provide its services, the Company indicates that it is a facilities-based

1 carrier. Also, Midwestern states that it meets the requirement of Section 214 (e) of the
2 Telecommunications Act of 1934, as amended, in that it provides the supported services
3 either using its own facilities or a combination of its own facilities and the resale of
4 another carrier's services. Additionally, Midwestern does not seek eligible
5 telecommunications designation in the rural areas of South Carolina.

6
7 **Q. HAS THE FEDERAL COMMUNICATION COMMISSION ESTABLISHED**
8 **REQUIREMENTS IN ADDITION TO THOSE SETOUT IN SECTION 54.201 (d)**
9 **FOR CARRIER'S SEEKING ELIGIBLE TELECOMMUNICATIONS CARRIER**
10 **STATUS?**

11 A. Yes. In March, 2005, the Federal Communications Commission (FCC) set out
12 additional minimum requirements in its Report and Order – FCC 05-46 for common
13 carriers seeking designation as an eligible telecommunication carrier by the FCC and
14 therefore, becoming eligible to receive federal universal service support. The FCC also
15 recommended that states adopt guidelines as part of its ETC review.

16 The overall goal of the FCC's minimum guidelines is to "allow for a more predictable
17 ETC designation process" and to "create a more rigorous ETC designation process".
18 Also, the FCC indicated that the application of these guidelines "by the Commission
19 (FCC) and state commissions will support the long-term sustainability of the [federal]
20 universal service fund." ¹ These guidelines were ultimately incorporated into FCC
21 Universal Service Rules (Part 54). These additional requirements for ETC designation
22 for common carriers under the FCC jurisdiction were included in Section 54.202 of the

¹ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 ¶ 1 (rel. March 17, 2005).

1 FCC rules. In summary, FCC stated “in considering whether a common carrier has
2 satisfied its burden of proof necessary to obtain ETC designation, we require that the
3 applicant: (1) provide a five-year plan demonstrating how high-cost universal service
4 support will be used to improve its coverage, service quality or capacity in every wire
5 center for which it seeks designation and expects to receive universal service support;
6 (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate
7 that it will satisfy consumer protection and service quality standards; (4) offer local
8 usage plans comparable to those offered by the incumbent local exchange carrier (LEC)
9 in the areas for which it seeks designation; and (5) acknowledge that it may be required
10 to provide equal access if all other ETCs in the designated service area relinquish their
11 designations pursuant to section 214(e)(4) of the Act.”²

12
13 **Q. HAVE THESE REQUIREMENTS BEEN ENDORSED BY THE PUBLIC**
14 **SERVICE COMMISSION OF SOUTH CAROLINA?**

15 **A.** The SCPSC has not specifically adopted the FCC’s requirements. However, the SCPSC
16 has sought comments whether it should use these guidelines on an interim basis while it
17 continues to promulgate state specific rules. In its May 30, 2007 Directive, Docket No.
18 2006-37-C, the SCPSC found “that we [SCPSC] consider the FCC’s guidelines
19 regarding designation of new ETCs in conjunction with the Commission’s [SCPSC]
20 existing framework of analysis of ETC application as reflected in prior Commission
21 [SCPSC] orders such as Order No. 2005-5, dated January 7, 2005 in Docket No. 2003-
22 158-C. In other words, we [SCPSC] should be informed by – but not controlled by –

² *Id.* at ¶ 2.

1 those guidelines, and the public interest should be paramount in our considerations.”

2 Also, the SCPSC filed proposed regulations with the South Carolina Legislative
3 Counsel on March 26, 2007, which have very similar requirements as those
4 recommended by the FCC. Since specific state regulations do not exist today, I think
5 the FCC guidelines are an appropriate measure to determine whether an Application (or
6 Petition) for ETC designation is complete.

7
8 **Q. IN CONSIDERATION OF THESE GUIDELINES, DO YOU THINK**
9 **MIDWESTERN’S APPLICATION IS COMPLETE?**

10 A. Midwestern’s Application does not address the additional requirements set out in
11 Section 54.202 nor does it meet the guidelines filed by the SCPSC with the SC
12 Legislative Council; therefore, ORS does not consider Midwestern’s Application
13 complete.

14
15 **Q. DOES THE OFFICE OF REGULATORY STAFF SUPPORT THIS**
16 **APPLICATION?**

17 A. The Office of Regulatory Staff realizes that the SCPSC has not finalized its regulations
18 regarding the designation of ETCs. However, the SCPSC has given some guidance on
19 these matters through its May 30, 2007 Directive in Docket 2006-37-C. After
20 consideration of the proposed regulations, drafted by the SCPSC and the FCC guidelines
21 by which the SCPSC stated it would be informed by, I would consider this Application
22 incomplete. One obvious omission from Midwestern’s Application is the requirement
23 that Midwestern demonstrate how high-cost universal service support will be used to

1 improve its coverage, service quality or capacity in every wire center for which it seeks
2 designation and expects to receive universal service support. The ORS feels that it is
3 imperative that an Applicant demonstrate how its use of federal universal service
4 support will benefit the consumers of South Carolina. The burden of demonstrating that
5 a carrier is eligible to receive Federal Universal Service support specifically lies with the
6 carrier. Based on the information currently available, it is my opinion that the ORS
7 cannot support this Application because the Applicant has failed to address certain
8 minimum requirements.

9
10 **Q. IN ADDITION TO THE COMPANY'S APPLICATION BEING INCOMPLETE,**
11 **DO YOU HAVE OTHER CONCERNS WHICH MAY IMPACT WHETHER**
12 **THE OFFICE OF REGULATORY STAFF WOULD SUPPORT**
13 **MIDWESTERN'S APPLICATION?**

14 **A.** Yes. ORS has an additional concern regarding whether the pure use of leased network
15 elements obtained from the incumbent local exchange carrier pursuant to a commercial
16 agreement qualifies a carrier for ETC designation under the current federal requirements
17 and pursuant to the requirements contained in the proposed regulations of the SCPSC.³
18 Based on the lack of specificity in the Application, ORS issued a Data Request to obtain
19 additional information regarding Midwestern's provision of service. ORS is awaiting
20 responses from the Company. Once Midwestern clarifies how it provides services
21 within South Carolina, ORS will further address its position on this issue.

³ 47 U.S.C. § 214(e)(a)(A) (A carrier designated as an ETC must, among other requirements, "offer the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)").

1 Finally, a review of the SCPSC's Docket Management System indicates that the
2 company published the Notice, enclosed in the SCPSC's May 25, 2007 transmittal
3 letter, in a single newspaper, which was Charleston's Post and Courier. Based on my
4 review of the Application, Midwestern seeks ETC designation in AT&T South Carolina
5 service areas which include other major population centers such as Greenville,
6 Columbia, and Florence. Therefore, ORS is concerned that the Applicant has failed to
7 comply with the SCPSC's noticing requirements which required the publication of the
8 notice in this matter "in newspapers of general circulation, in the affected areas".
9 Furthermore, Commission Regulation 103-821 (C)(3)(a) indicates that Midwestern was
10 required to publish "in newspapers having general circulation in the State, or, if
11 applicable, in newspapers having general circulation in the party's service area".
12

13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A. Yes.**

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-32-C

IN RE:

Midwestern Telecommunications, Incorporated)
Application for Designation as an Eligible)
Telecommunications Carrier for the Purposes)
of Receiving Federal Universal Service Support)
Pursuant to Sections 214 (e)(2) of the)
Telecommunications Act of 1996)

CERTIFICATE OF SERVICE

This is to certify that I, Pamela J. McMullan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **DIRECT TESTIMONY OF JAMES M. MCDANIEL** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC, 29202

Margaret M. Fox, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC, 29211



Pamela J. McMullan

July 10, 2007
Columbia, South Carolina